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January 9, 2004

To	Telephone	Facsimile
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From	Telephone	Code
Christine P. Sun	(415) 391-5400	5784/lhl
Re Overture v. Google		
Number of Pages (Including Cover): <u>2</u>		

COMMENTS

Please see attached correspondence dated January 9, 2004.

Operator	Time Sent
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January 9, 2004

VIA FACSIMILE AND FIRST CLASS MAIL.

Andrew C. Byrnes, Esq.
Heller Ehrman White & McAuliffe LLP
333 Bush Street
San Francisco, CA 94104-2878

Re: *Overture v. Google*

Dear Mr. Byrnes:

I write in response to your letter dated January 8, 2004 to Daralyn Durie of my office. I address the topics you raised in order.

First, regarding the email document production, Ravind Grewal of my office will contact you by no later than January 14 about the issues you raised in your letter.

Second, Google does not agree that it is appropriate to begin damages discovery at this time. Pursuant to the parties' agreement, Google has proceeded with the understanding that damages discovery would be stayed until at least after the *Markman* hearing. The fact that the *Markman* hearing has been rescheduled does not justify Overture's attempt to renege on that agreement. Moreover, given Overture's well-documented delays in providing discovery on the merits of this action, e.g., Google's outstanding request for a 30(b)(6) deposition on GoTo.com's pre-critical date system, we fail to see how proceeding with damages discovery at this point in time is warranted.

Third, Google will make a good faith effort to supplement its discovery responses by February 13, 2004, provided that Overture does the same. Please let me know as soon as possible if this is agreeable to you.

Lastly, Google agrees to provide an updated privilege log by February 13, 2004, so long as Overture does the same. My letter to Charles McMahon of October 17, 2003, the substance of which has not been responded to, outlines Google's preliminary concerns with Overture's privilege designations. Please let me know as soon as possible if this is agreeable to you.

Andrew C. Byrnes, Esq.
January 9, 2004
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If you have further questions or concerns, please do not hesitate to contact me at (415)
391-5400.

Very truly yours,



CHRISTINE P. SUN

CPS/lhl